

CHAPTER 1
COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURE

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 1]

[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 1]

351—1.1(68B) Formal complaints.

1.1(1) A formal complaint shall be on forms provided by the board and shall be certified under penalty of perjury. The complaint shall contain all information required by Iowa Code section 68B.32B(1).

1.1(2) A formal complaint is not deemed “accepted” by the board until after the legal review required by Iowa Code section 68B.32B(4). If the legal advisor opines that the complaint contains a legally sufficient allegation, the complaint is deemed accepted upon the completion of the legal review. If the legal advisor opines that the complaint does not contain a legally sufficient allegation and the board, upon review, makes a determination that the complaint does contain a legally sufficient allegation, the complaint is “accepted” upon completion of the board review. If the legal advisor opines that the complaint does not contain a legally sufficient allegation and the board, upon review, concurs, the complaint shall be dismissed without having been “accepted.”

1.1(3) Notice to the subject of a complaint is made only when a complaint is “accepted,” subject to the conditions of Iowa Code section 68B.32B(3). A complaint is a public record, subject to the conditions of Iowa Code section 68B.32B(11).

1.1(4) The board’s review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the basis of the facts alleged within the complaint.

This rule is intended to implement Iowa Code section 68B.32B.

351—1.2(68B) Investigations—board action.

1.2(1) Upon a determination that a formal complaint contains a legally sufficient allegation, the board shall refer the complaint to staff for investigation.

1.2(2) On its own motion, the board may refer to staff for investigation matters which the board believes may be subject to the board’s jurisdiction, including matters which are informally brought to the board’s attention by members of the public. However, the board will not consider information brought to the board anonymously unless tangible substantiation of the allegation has been provided.

1.2(3) Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, and other real evidence, as well as the attendance and testimony of witnesses for the purpose of an investigative interview.

1.2(4) Upon completion of an investigation, staff shall make a report to the board containing a recommendation for action as to whether a contested case should be commenced.

1.2(5) Upon receipt and review of the staff investigative report and recommendation, the board may:

a. Redirect the matter for further investigation or for negotiation of an informal settlement in lieu of a contested case;

b. Close the case with dismissal for lack of probable cause to believe a violation has occurred;

c. Close the case with dismissal without a determination regarding probable cause as an exercise of administrative discretion; or

d. Make a determination that probable cause exists to believe a violation has occurred and provide for the issuance of a statement of charges and notice of a contested case proceeding. Contested case proceedings shall be conducted in accordance with 351—Chapter 7.

This rule is intended to implement Iowa Code section 68B.32B.

351—1.3(68B) Grounds for disciplinary action. The board may impose discipline for:

- 1.3(1)** Failure to timely file required campaign disclosure statements or reports.
- 1.3(2)** Failure to comply with requirements regarding maintenance of committee funds or records.
- 1.3(3)** Failure to timely respond or provide information to board or staff inquiries regarding campaign disclosure reports.
- 1.3(4)** Failure to provide proper disclaimer statements on political published material.
- 1.3(5)** The making or acceptance of prohibited corporate contributions.
- 1.3(6)** The making of an improper expenditure from a candidate's committee.
- 1.3(7)** Improper use of public funds or resources for a political purpose.
- 1.3(8)** Other violations of Iowa Code chapter 56 or rules adopted thereunder.
- 1.3(9)** The making or acceptance of a prohibited gift within the executive branch of state government.
- 1.3(10)** Engaging in an unacceptable conflict of interests within the executive branch of state government without taking required remedial action, as specified in Iowa Code section 68B.2A.
- 1.3(11)** Violation of the ban on certain lobbying activities by an affected member of the executive branch of state government.
- 1.3(12)** Violation of restriction on sales of goods or services by a member of the executive branch of state government.
- 1.3(13)** Failure to file required personal financial disclosure statements by an affected member of the executive branch of state government.
- 1.3(14)** Failure to file lobbyist registration, lobbyist reports, or lobbyist client reports by lobbyists or clients of lobbyists engaged in lobbying the executive branch of state government.
- 1.3(15)** Other violations of Iowa Code chapter 68B or rules adopted thereunder, as applied to the executive branch of state government.

This rule is intended to implement Iowa Code sections 68B.32A and 68B.32B.

351—1.4(68B) Disciplinary remedies; routine enforcement matters—contested case challenge.

- 1.4(1)** Options for board-imposed discipline are set out in Iowa Code section 68B.32D and include the assessment of a civil penalty not to exceed \$2000. In addition, if the board determines that a violation appears to have been committed with deliberate intent, the board may refer the matter to the attorney general or appropriate county attorney with a recommendation for criminal prosecution.
- 1.4(2)** Routine violations may be handled administratively rather than through a disciplinary process. Classes of matters which may be handled in this manner unless unique circumstances exist, rather than through a full investigative process and commencement of a contested case, include but are not limited to: late campaign disclosure reports; late lobbyist reports; late lobbyist client reports; and the failure to provide the required disclosure statement of political published material. The board may adopt penalty schedules for late reports. The board may direct that a person who may be subject to board discipline take specified remedial action. The board may issue a letter of reprimand if the board finds that a violation had occurred, but has subsequently been rectified, and that the person had or had available information which should have prevented the violation. A letter of reprimand places the recipient on notice that future violations may be subject to more serious discipline. Letters of reprimand are public documents, and a record of letters of reprimand may be included when providing a public report of official actions of the board.

1.4(3) A person subject to board discipline may accept administrative resolution, but is not required to do so. If the person accepts the administrative resolution of a routine enforcement matter through the payment of a scheduled penalty, compliance with recommended remedial action, or acceptance of a letter of reprimand, the matter shall be closed. If the person wishes to contest the administrative resolution, the person shall make a request for reconsideration or for a contested case proceeding in writing to the board's executive director which shall be received within 30 days of the date of the correspondence informing the person of the assessment of a scheduled penalty or of other intentions for administrative resolution. Requests for waiver or reduction of a scheduled penalty shall be treated as a request for reconsideration. If the person requests reconsideration and subsequently wishes to contest the board's action on the reconsideration, the person may make a written request for a contested case proceeding to the executive director which shall be received within 30 days of the date of the correspondence informing the person of the board's action. However, the issuance of a letter of reprimand under subrule 1.4(2) is final agency action subject to judicial review, and is not subject to contested case proceedings.

1.4(4) Upon timely receipt of a request for a contested case proceeding to challenge administrative resolution of a routine enforcement matter, the board shall provide for the issuance of a statement of charges and notice of hearing. The contested case shall be conducted in accordance with the provisions of 351—Chapter 7. The burden shall remain on board staff to prove that a violation has occurred. Failure to challenge the administrative resolution through a request for a contested case proceeding is a failure to exhaust administrative remedies.

1.4(5) The board may admonish a person who it believes has committed a minor violation. An admonition is not discipline and is not subject to contested case review.

This rule is intended to implement Iowa Code sections 68B.32A, 68B.32B, and 68B.32D.

351—1.5(17A,68B) Informal settlements.

1.5(1) Informal settlements may be negotiated at any time during an investigation or after the commencement of a contested case proceeding. Negotiations on behalf of the board shall be conducted by the board's legal counsel. Upon agreement of the parties to commence negotiation, the board's legal counsel is authorized to discuss informal settlement proposals with the chairperson or the chairperson's designee. After commencement of a contested case, consent to negotiation by a respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement discussions between the board's legal counsel and the board member.

1.5(2) All informal settlements shall be in writing and are subject to approval of a majority of the full board. If the board fails to approve a proposed informal settlement, it shall be of no force or effect to either party.

1.5(3) A board member who is designated to act in negotiation of an informal settlement may review investigative material in the course of conducting the negotiation. The designated board member is not disqualified from participating in the adjudication of a contested case by virtue of reviewing the investigative material or having participated in negotiation discussions.

This rule is intended to implement Iowa Code sections 17A.10 and 17A.12 and Iowa Code section 68B.32B.

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